

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca

Fax: 703-872-6113

5890
November 22, 2013

[REDACTED]

IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd

[REDACTED]

Claim No.: J05003-0029

Dear Mr. Davis:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number J05003-0029 involving M/V SELENDANG AYU - J05003 oil pollution incident in the amount of \$350.00

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number J05003-0029.

Mail reconsideration request to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard
Arlington, VA 20598-7100

[REDACTED]

Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION

Claim Number: J05003-0029
Claimant: IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
Type of Claimant: Corporate
Type of Claim: Limit of Liability
Claim Manager: [REDACTED]
Amount Requested: [REDACTED]

INCIDENT

The M/V SELENDANG AYU (SELENDANG or vessel) was on a voyage from Seattle to China on December 06, 2004. While operating in adverse weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. While attempting to repair the engine, the vessel drifted and eventually grounded on December 08, 2004 on a rocky shelf on the north shore of Unalaska Island, northeast of Spray Cape. The grounding ruptured the vessel's hull and bottom tanks, causing a discharge of approximately 330,000 gallons of bunkers into the waters off Unalaska Island.

CLAIMANT AND CLAIM

Claimants

Ayu Navigation Sdn Bhd (Ayu), IMC Shipping Co. Pte. Ltd. (IMC), Sveriges Angfartygs Assurans Forening (The Swedish Club), and International Group of Protection and Indemnity Clubs (International Group) (collectively "Claimants") are the responsible parties (RP) under the Oil Pollution Act of 1990 (OPA) and their insurers. Ayu owned the vessel, and IMC operated it. The Swedish Club, International Group, and the International Group's reinsurers were the subrogated underwriters.

Pursuant to 33 U.S.C. § 2708(a)(2), the Claimants presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) via the National Pollution Funds Center (NPFC) on December 07, 2007, asserting entitlement to a limit on its liability for oil removal costs and damages resulting from the incident. On January 27, 2012, the NPFC determined that the Claimants were entitled to their statutory limit of liability, \$23,853,000. The Claimants now seek reimbursement for incurred removal costs and for damages paid to third parties above their liability limit.

Claim

The Claimants, through their attorneys, Keesal, Young & Logan (KYL), sent a letter to the National Pollution Funds Center (NPFC) dated December 6, 2007 outlining claims for which they were seeking reimbursement for third party damage claims. Attached to this letter were exhibits, including a summary of claimed costs.¹ The claimed costs were not identified in the original claim submission. By letter dated March 21, 2012, Claimants submitted a document entitled Third Party Claim Detail that listed all costs paid to third party claimants plus RP costs paid for certain vendors' services. This claim before the Fund seeks reimbursement of \$350.00 Claimants paid for consulting services paid to Gallagher Marine Services (Gallagher).

APPLICABLE LAW

¹ Initial submission, tab 2.

The Oil Pollution Act of 1990 provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C §2702 (a).

A responsible party “may assert a claim for removal costs and damages under section 2713 of this title only if the responsible party demonstrates that” it is entitled to a limitation of liability under §1004 of OPA. 33 U.S.C. §2708(a)

Responsible parties who have demonstrated entitlement to a limit of liability may submit claims to the Oil Spill Liability Trust Fund for removal costs and damages incurred by the responsible party, plus amounts paid by the responsible party for claims asserted under section 1013 of OPA.

The Fund shall be available to the President for the payment of claims for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. § 2712(a)(4). Covered damages under U.S.C. §2702 (b)(2)(A) – (F) are natural resources, real or personal property, subsistence use, government revenues, profits and earning capacity and public services.

DETERMINATION

KYL submitted this claim to the Fund, seeking reimbursement of \$350.00 Claimants paid to Gallagher Marine Services for consulting services.² KYL provided sparse documentation to support this claim. Included in the submissions were time sheets for the weeks of December 3-9, 2007; December 10-16, 2007, and December 17-19, 2007 for Howard Hile. There was also one invoice supporting these time sheets in the amount of \$8,312.50. There is also one document – a one-line item for \$350.00 as part of the \$8,312.50 invoice, noting that 2 hours was expended to review the Qawalangin Tribe claim.

According to the one-line document this \$350.00 payment was for “landowner claim consultant” services to assist with review of the Qawalangin Tribe claim. Consultant costs are not specifically defined as a removal cost or damage under OPA; therefore, these costs cannot be paid from the Fund. This claim is denied.

Claim Supervisor:

Date of Supervisor's review: 11/22/2013

Supervisor Action: **Denial Approved.**

Supervisor's Comments:

² According to the Third Party Claim Detail Gallagher is classified as a “Landowner Claim Consultant.”